

the Tithe Robuff. *lib. 2. n. 15. & seqq. G. Tholoz. lib. Dege* *Parsons Counts*  
*chap. 6. Theophor Parsons guide Chap. 7.*

It is an important Question, whether he who has Right to receive the Tithes of  
 one kind of Fruits of Lands, may claim the Tithes of another kind as sur-  
 rogation, when the Land is sown with other Seed, or improved to a different Use,  
 by being being turned from Corn to Grass, or from Grass to Corn? According to the  
 Canon Law, it would seem that he might claim it. *c. commissum. q. 2. de decim.*  
 But in Order to set this Matter in a clearer Light, let us consider <sup>different</sup> the Cases  
 of having Right to both Parsonage and Vicarage Tithes, and where they belong  
 to distinct Titulars. In the first Case I hold it for a Principle, that the Rector  
 may give Dominij labour his ground or not, and make it produce the Subject  
 of Parsonage or Vicarage Tithe as he thinks fit, *Robuff de decim. l. 6. n. 35*  
*Expedit de bench. eccles. tit. 10. sect. 2. n. 5 & 6. Grimaudet Traite des Dignes*  
*l. 3. chap. 3. n. 7. & 8.* And the Titular can only claim the Tithe of the new  
 Improvement or present Product, if that was formerly in Use to pay Tithes, &  
 there was no Tithe due 9 June 1676 *Birnet contra Job Stair Lib. 2. tit. 8.*  
 & 31, unless it can be made appear, that the Rector industriously so disposed  
 of his Land, to defraud the Titular: But this is not to be presumed, for we can  
 not reasonably suppose, that any Man would out of Envy to the Tithe Master,  
 will injury himself, by suffering for Example, his Lands to be fallow,  
 or his Land to grasslands, who can hinder that which is the native Effect of  
 his Property? Now as the Tithe Master hath not such a Right to the Tithes, as to  
 compel the Rector to labour his ground, or to hinder him in the free Exercise  
 of his Property, by making what Use of it he thinks fit, so if no Tithe hath been  
 formerly due for the new Improvement, there is no Reason to induce an Obliga-  
 tion for it in Time coming, upon the account of any Tithe to the Tithe of a dif-  
 ferent Kind. If the Titular of the Tithes find himself at a Loss, by the Rector's ar-  
 bitrary Disposal of his ground, he may apply to the Commission for Remedy by  
 Valuation, to fix and liquidate the Value of Tithes for the future. I would also  
 incline to think, that an Rector is as much at Liberty in the cultivating and  
 ordering of his ground, when there are different Pretenders to the Parsonage and  
 Vicarage Tithes, as when one has Right to both; and that he may by inverting  
 the Use of his Property to a sic, advantage the one to the others prejudice, as to  
 the Payment of bygone Tithes. But then the Party wronged may sue right his  
 Parsonage or Vicarage by the Quantity of ground that was Pasture or sown  
 the year immediately preceeding, since that might prove unequal by the Fraud  
 of a contentious Rector: but will consider the total of arable and grassland for  
 seven years backward, and make the seventh part of that a standard Rent for  
*munibus annis.*

A Liferenter of Lands who has Right to Stock and Tithes; and forms the  
 Stock

Stock reserving the drawing of the Tithe, having not before Martinmas set  
 the Tithe was drawn; her Executor will have Right to the same, as if she had la-  
 boured and reaped the whole Harvest himself. *St. Siferent.* When lands  
 are set for third and Tithe, and the Master (who is not paid by the Tenant out of the  
 Product of the Corn, but has alike Interest in *ipso corpore* as the Tenant himself) dies  
 before Separation, his Executors have Right to his whole third and Tithe, as the  
 Tenants Executors would have Right to his third part; *Stewart lib. 1. tit. 3 & 4.* A  
 Titular who is in possession of Tithes dying before Michaelmas, these Tithes belong  
 to his Executors, *languar. sementem fecerit. Stewart lib. 1. tit. 1. tit. 1. tit. 1.* Tithes  
 pertain to him and his Executors who had Right at reaping time, albeit he dies after  
 the Corn were sown before they were led and before Martinmas there after shall  
 four Draft. 21 March 1628 *Murray contra Intrumetors with Friends.*  
 Because Tithes may be disposed of immediately after the Corns are sown, and do not  
 divide as Farms or other Dutys where the Person having Right thereof trans-  
 mits to his Executors Right only to the Half of that Years Duty.

A.

The Persons by whom Tithes are payable.

According to the Canon Law, all Persons of whatever Condition Rank or  
 Quality, are subject to the Payment of Tithes *c. ex transmissa 23 et c. seqq. X.*  
*de decimis.* The Prince's own Goods are tithable *Gloss. in c. omnes principes 4. X.*  
*de major. & obed. Robuff de decim. l. 5. n. 23. l. 8. n. 27. l. 13. n. 101. Briz-*  
*nemi de pure eccles. lib. 2. cap. 6. n. 12.* Nor is an Rector excused from paying  
 Tithes, tho' the Product be no more than is necessary for maintaining his own Fam-  
 ily *Arg. l. i. c. qui non. ced. poss. c. cum homines 7. X. de decim. Loes in de-*  
*cretal lib. 3. tit. 30. c. 2. n. 19. canis de decim. cap. 5. n. 1.* A Right of Tithes is  
 effectual against all Intrumetors *c. pastoralis 28 vers. fructus autem. c. cum non*  
*tit. 33. X. de decimis.* If the Lands be set in Fee, the Tenant and not the Master  
 is concerned *c. delecti d. c. a nobis 24. eod. canis. lib. 2. cap. 9. n. 2.* Loes *f.*  
*lib. 2. n. 29.* If they be partly laboured by the Master, and partly by the Tenant both  
 are to account for the Tithe pro rata *c. lra. nobis 26. X. eod.* Tithes being owed  
 fructuum non prediorum *Brinon. de pure eccles. lib. 2. cap. 6. n. 7.* And it  
 being unreasonable, *ut alter alterius odio praegravetur c. n. debet 22 de reg. jur.*  
 in *c.* So Tithes are not debita fundi affecting singular Successors, or affording a  
 pinding of the ground, for such as were uplifted by their Ancestors or others; even  
 tho' the Tithes be valued 20 Feb. 1662 *z. Calandor contra Monro. Stair Lib. 2.*  
*tit. 8. s. 32.* Nor yet is a present Rector liable while a Liferenter possesseth  
 24 June 1663 *Menzie's contra L. Glenurchie.* Tithes affect all Intrumetors, whi-  
 ther with the separate Tithe or with Stock and Tithe jointly *Stair lib. 2. s. 1. lib.*  
*4. tit. 24. s. 1.* And a Comproiser of the heretible Right of Tithes, being in fact  
 was found liable, albeit he did not intrumet and renounce his Comproisours seeing  
 he might have intrumetted, and had the legal Remedy of Action of Spuilzie  
 against